

EXHIBIT A

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Michael Ben-Jacob - October 12, 2021

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
MASTER DOCKET 18-MD-2865 (LAK)
CASE NO. 18-CV-09797

IN RE:)
)
)

CUSTOMS AND TAX ADMINISTRATION OF)
THE KINGDOM OF DENMARK)
(SKATTEFORVALTNINGEN) TAX REFUND)
SCHEME LITIGATION)
)
-----)

C O N F I D E N T I A L

REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL
EXAMINATION OF
MICHAEL BEN-JACOB
VOLUME II
DATE: October 12, 2021

REPORTED BY: MICHAEL FRIEDMAN, CCR

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9 (Pages 358 to 361)

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1 pension fund within the meaning of Article 4,
2 Article 10 and Article 22 of the Double
3 Taxation Convention between Denmark and the
4 United States of America, and request Acupay
5 System, LLC to apply for a full refund of
6 excess withholding tax."

7 Do you see that?

8 A I do.

9 Q What did you do to satisfy yourself
10 that you could make that representation?

11 A To the best of my recollection,
12 this representation seems to be a sort of
13 mixed question of U.S. law and possibly
14 Danish law.

15 For example, the words "qualifying
16 U.S. pension fund," to the extent that that
17 would be understood under U.S. law, I
18 consulted with -- to the best of my
19 recollection and belief, consulted with our
20 internal -- our Kaye Scholer's internal
21 pension experts Kathleen Wechter and Arthur
22 Woodard.

23 And with respect to any issues of
24 Danish law, I confirmed them with Jerome
25 Lhote, who had represented to me that he had

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1 those questions confirmed by Danish counsel.

2 Q Did you provide to Ms. Wechter or
3 Mr. Woodard with the forms from the payment
4 agents that you were signing?

5 MR. DEWEY: Objection.

6 A I don't have a specific
7 recollection of whether I provided the forms
8 to Mr. Woodard or Ms. Wechter or whether the
9 client group, someone in the client group
10 provided it, but I do have the impression
11 that one or both of them saw the actual
12 forms.

13 Q Sir, could I ask you, please, to
14 turn to Exhibit 2110.

15 A 2110, I don't seem to have it here.

16 MR. DEWEY: It's one of the new
17 ones. Here.

18 A I have the exhibit.

19 If you bear with me, I would like
20 to read it.

21 Q I'm only going to ask you about
22 your e-mail to Mr. Woodard on or about
23 February 7, 2011.

24 A Yes, I understand that's the --
25 that's the exhibit.

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1 I'm reading it now.

2 (Witness reviewing.)

3 Okay. I have read through the
4 e-mail. I'm prepared for your questions.

5 Q Sir, in the second part of the
6 page, there's a section that begins "By way
7 of background."

8 Do you see that?

9 A I do.

10 Q And you say, "The contemplated
11 transaction is an ex-dividend play that would
12 take advantage of certain loopholes in German
13 tax law and permit our clients to receive a
14 tax refund from the German government for
15 taxes that they did not in fact pay."

16 Now, do you see that?

17 A I do.

18 Q Had you ever previously been
19 involved in any transaction where someone
20 sought to receive a tax refund from a
21 government for taxes that they did not in
22 fact pay?

23 MR. DEWEY: Objection.

24 A So I don't have a specific
25 recollection of this e-mail, but as I sit

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1 here today, I believe that you're
2 misinterpreting the phrase "tax refund from
3 the German government for taxes that they did
4 not that in fact pay."

5 That's a -- that would be my way of
6 saying to another tax practitioner, as noted
7 further in the e-mail, that the dividend tax
8 was withheld at source, so that the client or
9 the owner of the shares was not out-of-pocket
10 for the tax paid.

11 Q The client had not paid the tax.
12 Right?

13 A Oh, sure, he did. It was simply
14 withheld at source by the company.

15 As a withholding -- whenever, under
16 the general tax principles, an entity
17 withholds tax, they're withholding it on
18 behalf of the owner of the -- of the income,
19 the owner of the dividend, which in this case
20 would be the clients.

21 Q If you look at the bottom of the
22 page, sir, you say, "Note that as mentioned
23 above, the German company has paid a tax in
24 respect of the dividend amount."

25 Do you see that?